

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JUDGE GRIESA

-----X
ANGELA DEDIVANOVIC,

Plaintiff,

05

CV

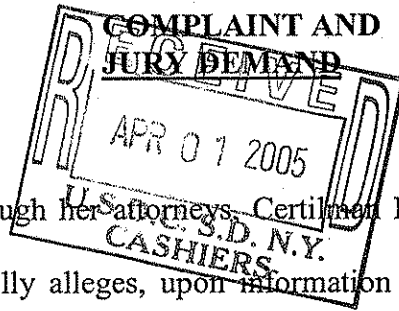
Case No.:

3458

-against-

BUILDING SERVICE 32B-J PENSION FUND,

Defendant.
-----X



Plaintiff, Angela Dedivanovic, by and through her attorneys, Certilman Balin Adler & Hyman, LLP, as and for her complaint, respectfully alleges, upon information and belief, as follows:

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over the within action pursuant to 28 U.S.C. §1331 and 29 U.S.C. §1132.
2. This action is brought pursuant to the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. §1140, *et seq.*
3. Venue in this district is proper pursuant to 28 U.S.C.A. 1391(b) and 29 U.S.C. §1132(e)(2) in that the employee benefits plan hereunder is administered, *inter alia*, in the Southern District of New York.

PARTIES

4. At all relevant times, Plaintiff was and is an individual who resides in Bronx County, State of New York, and a member of SEIU Local Union 32B-32J ("Local 32B-J"), and a participant of and/or a covered beneficiary under the Building Service 32 B-J Pension Fund

(the "Pension Fund") at all times relevant to this complaint. As such, Plaintiff was eligible for a disability pension.

5. The Pension Fund is an employee benefits plan under the ERISA.

6. Upon information and belief, defendant Building Service 32B-J Pension Fund was the administrator of the Pension Plan within the meaning of 29 U.S.C. §1002 (16) (A).

BACKGROUND

7. On or about May 31, 2002, Plaintiff sustained serious injuries which have rendered her disabled, and thereby she has not been able to engage in gainful employment activity since that date.

8. Plaintiff, pursuant to the terms of her membership in SEIU Local Union 32B-32J, was eligible to receive certain disability pension benefits under the Pension Plan administered by defendant Building Service 32B-J Pension Fund.

9. Plaintiff timely and properly applied for her disability pension benefits from defendants.

10. Defendant improperly, intentionally, maliciously, arbitrarily and capriciously denied Plaintiff her disability pension benefits.

11. Plaintiff timely and properly appealed the denial of her disability pension benefits pursuant to the procedures established by Defendant.

12. Defendant improperly, intentionally, maliciously, arbitrarily and capriciously denied Plaintiff's appeal.

13. Plaintiff is eligible to receive disability pension benefits under the "Pension Fund".

14. Plaintiff has applied for and is receiving Social Security Disability Benefits.

AS AND FOR A FIRST CAUSE OF ACTION

15. In accordance with the Pension Plan, plaintiff was entitled to certain disability pension benefits.

16. Defendant breached their obligations to plaintiff under the Pension Plan by denying the benefits there under.

17. As a result, plaintiff has been and continues to be damaged by Defendant, and is entitled to the full benefits as provided under the Pension Plan, retroactive to the date of her first eligibility.

AS AND FOR A SECOND CAUSE OF ACTION

18. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs "1" through "17" herein as if fully set forth herein.

19. Plaintiff is entitled to a declaration that Defendant were and are required to afford plaintiff the full extent of the disability pension benefits under the Pension Plan.

AS AND FOR A THIRD CAUSE OF ACTION

20. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs "1" through "19" herein as if fully set forth herein.

21. Defendant are liable to plaintiff for attorneys fees, disbursements, and costs incurred in commencing the prosecution of this action pursuant to 29 U.S.C. §1132(g).

JURY DEMAND

Plaintiff herein demands trial by jury as to all triable issues in this action.

WHEREFORE, plaintiff Angela Dedivanovic demands judgment against defendants as follows:

1. Affording her the full benefits under the disability pension benefits under the Pension Plan;
2. Declaring that Plaintiff is entitled to the full disability pension benefits under the Pension Plan;
3. The attorneys fees, disbursements and costs incurred by Plaintiff in connection with this action; and
4. For such other and further relief as the Court deems just, equitable, and proper.

DATED: East Meadow, New York
March 31, 2005

Yours, etc.,

CERTILMAN BALIN ADLER & HYMAN, LLP

By. 

Thomas A. Bizzaro, Jr., Esq. (TB1201)

Attorneys for Plaintiff

90 Merrick Avenue – 9th Floor

East Meadow, New York 11554

(516) 296-7000